

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JEREMY DANIEL SCHUH,

Plaintiff,

v.

CASE NO. 1:09-CV-982

MICHIGAN DEPARTMENT OF
CORRECTIONS, et al.,

HON. ROBERT J. JONKER

Defendants.

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ORDER APPROVING REPORT AND RECOMMENDATION

The Court has reviewed Magistrate Judge Brenneman's Report and Recommendation in this matter (docket # 100) and Plaintiff Schuh's Objections to the Report and Recommendation (docket # 101). Under the Federal Rules of Civil Procedure, where, as here, a party has objected to portions of a Report and Recommendation, “[t]he district judge . . . has a duty to reject the magistrate judge's recommendation unless, on de novo reconsideration, he or she finds it justified.” 12 WRIGHT, MILLER, & MARCUS, FEDERAL PRACTICE AND PROCEDURE § 3070.2, at 381 (2d ed. 1997). Specifically, the Rules provide that:

The district judge to whom the case is assigned shall make a de novo determination upon the record, or after additional evidence, of any portion of the magistrate judge's disposition to which specific written objection has been made in accordance with this rule. The district judge may accept, reject, or modify the recommended decision, receive further evidence, or recommit the matter to the magistrate judge with instructions.

FED R. CIV. P. 72(b). De novo review in these circumstances requires at least a review of the evidence before the Magistrate Judge. *Hill v. Duriron Co.*, 656 F.2d 1208, 1215 (6th Cir. 1981).

The Court has reviewed de novo the claims and evidence presented to the Magistrate Judge; the Report and Recommendation itself; and Plaintiff's objections. After its review, the Court finds that Magistrate Judge Brenneman's Report and Recommendation is factually sound and legally correct.

In his Report and Recommendation, Magistrate Judge Brenneman recommends that Mr. Schuh's Motion for a Preliminary Injunction and/or Temporary Restraining Order (docket # 7) be denied. Mr. Schuh objects to the Report and Recommendation's finding that he is not entitled to a TRO because he did not submit an affidavit or verified complaint. (R. and R., docket # 100, at 3; Obj., docket # 100, 1-2.) However, the Report and Recommendation also addressed the merits of Mr. Schuh's motion for a TRO and properly concluded that even if the Court construed the amended complaint as verified, Mr. Schuh would not be entitled to a TRO on the merits. (R. and R., docket # 100, 3-4.)

Mr. Schuh notes in his objections the Report and Recommendation's finding that to the extent he seeks a preliminary injunction, his request is procedurally improper, because he failed to notify the adverse parties. (*Id.* at 4-5.) Mr. Schuh concedes that he did not serve the motion and offers to do so. (Obj., docket # 101, at 4.) Service would not change the outcome of his motion, however. On this record a preliminary injunction would not be appropriate, for primarily the same reasons the Report and Recommendation states regarding merits of the TRO. (See Report and Recommendation, docket # 100, at 3-4.) In particular, Mr. Schuh has not shown that he will be transferred to the Ionia Maximum Correctional Facility at a specific point; rather, he would like to ensure that he will not be transferred there at any time in the future. (Obj., docket # 101, 3-4.) Injunctive relief "will not be granted against something merely feared as liable to occur at some

indefinite time in the future.” *State of Connecticut v. Commonwealth of Massachusetts*, 282 U.S. 660, 674 (1931). Further, Mr. Schuh has acknowledged that he is now receiving a Kosher diet, which moots his request for injunctive relief in the form of a Kosher diet. (*Id.*, 2-3.)

Mr. Schuh’s remaining objections broadly reiterate and clarify claims already presented in his motion and do not change the analysis. For the reasons stated in the Report and Recommendation, Mr. Schuh is not entitled to the ex parte injunctive relief he seeks.

ACCORDINGLY, IT IS ORDERED that the Report and Recommendation of the Magistrate Judge (docket # 100) is approved and adopted as the opinion of the Court.

IT IS FURTHER ORDERED that Plaintiff’s ex parte Motion for a Preliminary Injunction and/or Temporary Restraining Order (docket # 7) is **DENIED**.

IT IS FURTHER ORDERED that Plaintiff’s Motion to Inquire into Disposition of Motions for Preliminary Injunction and TRO (docket # 30) is **DISMISSED AS MOOT**.

Dated: September 16, 2010

/s/ Robert J. Jonker
ROBERT J. JONKER
UNITED STATES DISTRICT JUDGE